

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1998 OF 2006

Hussain Ismail Khan ..Petitioner

Vs.

The State of Maharashtra and ors. ..Respondents

Mr. J.B. Kocheta for petitioner.

Mr. A.S. Shitole, APP for State.

CORAM: B.H. MARLAPALLE, J.

Date : July 16, 2007.

P.C.:

1. This petition arises from the order of externment passed by the Competent Authority under Section 56 (b) of the Bombay Police Act, 1951 on 10/8/2005 and subsequently confirmed by the Lower Appellate Authority in Appeal No. 18 of 2006 which came to be dismissed on 24/7/2006.

2. As before the Appellate Authority, the learned counsel for the petitioner reiterated the very same grounds against the order of externment and they are as under:-

(a) The order of externment issued by the Competent Authority against the appellant is illegal and against the principles of natural justice.

(b) The Competent Authority has not given reasonable opportunity to the appellant to tender an explanation.

(c) The appellant is acquitted from C.R. No.456 of 1991 and this was not considered by the Competent Authority while passing the externment order and, therefore, it suffers from non-application of mind.

(d) The action of externment against the appellant is based on the old crime in as much as there were two crimes registered in the year 1991 i.e. about 14 years prior to the date of the externment order.

(e) In the show-cause notice to the appellant,

the details regarding the place, date and time are not given.

3. The Lower Appellate Authority while confirming the externment order held in his order dated 24/7/2006 that out of the six CRs registered against the petitioner, he was acquitted in the case arising from CR No.456 of 1991 and that too on account of the compromise between the complainant and the petitioner. The Appellate Authority also given the benefit to the petitioner of the two CRs registered in the year 1991 and thus noted that at least there were four CRs which were registered against the petitioner during the years 2002 to 2004 and there were three secrete statements (in-camera statements) recorded against the petitioner. In addition, Chapter Proceedings were initiated against the petitioner in Chapter Case No.112 of 2003 giving benefit of the old Chapter Case No.21 of 1991. Thus, in all four offences registered against the petitioner during the years 2002 to 2004, one Chapter Case registered and three in-camera statements recorded was the material available before the Appellate Authority to consider and decide the

appeal filed by the petitioner. In addition, the petitioner had relied upon the decision of this court (Nagpur Bench) in the case of Shri Sakpal vs. State of Maharashtra (Criminal Application No.575 of 2004) and the same was allowed by this court holding that eight offences under the Bombay Prevention of Gambling Act and one offence under the IPC were registered and the externment order was passed under Section 56 of the Bombay Police Act, 1951. This court held that the externment order was most uncalled for and it was set aside. The Appellate Authority has distinguished the facts of the present case, namely, one offence is registered under the Bombay Prevention of Gambling Act and five offences registered under Chapter XII, XVI and XVII of IPC and, therefore, the decision of this court in Sakpal's case (Supra) was not applicable. The learned counsel for the petitioner has also relied upon a decision of this court (Division Bench) in the case of Yeshwant Damodar Patil vs. Hemant Karkar, Dy. Commissioner of Police and anr. [1989 (3) Bom. C.R. 240] and submitted that the in-camera statements did not indicate that these witnesses were not willing to come and depose against the petitioner in the pending

cases before the court. Let it be noted that such is not the requirement in law nor is the observation of this court in Yeshwant's case.

4. Section 56 of the Bombay Police Act, 1951 has two parts and we are not concerned with the second part. In the first part, externment is visualised in three different situations, namely,

(a) that the movements or acts of any person are causing or calculated to cause alarm, danger or harm to person or property,

(b) that there are reasonable grounds for believing that such person is engaged or is about to be engaged in the commission of an offence involving force or violence, or an offence punishable under Chapter XII, XVI or XVII of IPC or in the abetment of any such offence and when in the opinion of such officer witnesses are not willing to come forward to give evidence in public against such person by reason of apprehension on their

part as regards the safety of their person or property,

(c) or that there are reasonable grounds for believing that such person is acting or is about to act in any manner prejudicial to the maintenance of public order as defined in the Maharashtra Prevention of Communal, Antisocial and other Dangerous Activities Act, 1980.

5. We are not concerned with the third part in the instant case and even also the first part because the impugned externment order is passed under Section 56(1) and part (b) as noted hereinabove of the Bombay Police Act, 1951. The Appellate Authority noted in its concluding paragraphs that compliance of these conditions in part (b) was made in as much as from the in-camera statements it was clear that witness were not willing to come forward to give evidence in public because of the fear of the petitioner and the Competent Authority was satisfied that the petitioner is a person engaged in or about to engage in the commission of the offences punishable under Chapter

XII, XVI and XVII of IPC.

6. It was further submitted by the learned counsel for the petitioner that in the show-cause notice dated 11/1/2005 it was not stated that the witnesses were reluctant to come and make statement against the petitioner in public. It was also submitted that the Chapter Cases which find place in the externment order were not mentioned in the show-cause notice. He further submitted that the petitioner had appeared before the Competent Authority on 10/8/2005 and on the same day the externment order was passed, thus denying him the legal assistance. These issues also have been considered by the Lower Appellate Authority. On 21/1/2005 the police went to the house of the petitioner to serve the show-cause notice so as to give him an opportunity to tender the explanation, he was not found at home and though the notice was affixed on his house conspicuously he did not remain present. Second notice was served on 7/3/2005 but it could not be served as he was found away from his home and again the police affixed the said notice conspicuously on the house of the

petitioner. The petitioner remained absent. The enquiry officer sent the externment report of the petitioner to the Competent Authority on 11/4/2005 and thereafter to give him one more opportunity to tender his explanation and to produce defence witnesses, if any, he was called upon to remain present on 20/4/2005, but when the police went to the house of the petitioner for service of the notice, he was not found at the home. Consequently, the notice was served to the petitioner's wife Mrs. Ruksana Hussain Khan and the copy of the same was displayed conspicuously on the door of his house by preparing panchanama in the presence of two witnesses, even then the petitioner did not remain present before the Competent Authority. Therefore, on 8/7/2005 again the police went to the house of the petitioner, he was not found at home and, therefore, a warning was left with the petitioner's wife that if he remained absent on 10/8/2005 the order will be passed. The petitioner remained present on 10/8/2005, did not submit any application seeking time or seeking permission to be represented by a lawyer. He only stated in his written statement before the Competent Authority that

in the year 1991 six offences were registered at Yerawada Police Station and some of them were still pending before the Court. He further submitted that if he was externed his wife and children would become helpless and would be left without any support. He, therefore, urged the Competent Authority to give him one chance to improve. It was under these circumstances the Lower Appellate Authority held that the petitioner was given sufficient opportunity to reply to the show-cause notice and the principles of natural justice were duly followed. The criminal case arising from CR No.456/1991 has resulted in acquittal and that would not be a reason to vitiate the impugned order as being without application of mind.

7. In view of the elaborate reasoning set out by the Lower Appellate Authority on perusal of the record placed before him by the Competent Authority, I do not see any case of error apparent on the face of the record or any perversity in the order passed by the Appellate Authority and the order of externment has merged in the order passed by the Appellate Authority. The externment period was for two years and it is

likely to expire on 10th August, 2007.

8. I am, therefore, satisfied that no case is made out to cause interference in the order of externment in this petition under Article 227 of the Constitution and, therefore, the same is hereby dismissed.

(B.H. Marlapalle, J.)